

Exhibit A

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
- - - - -
CHARLES DEMPSEY, individually, and
L.D., by her father and natural guardian,
CHARLES DEMPSEY,

Plaintiffs,

Case No. 19:cv:6780

v.

THE CITY OF ROCHESTER, a municipal entity,
JAVIER ALGARIN, ADAM GORMAN, "JOHN DOE" RPD
OFFICER RESPONSIBLE FOR TRAINING JAVIER ALGARIN,

Defendants.
- - - - -

Deposition Upon Oral Examination of:

Charles R. Dempsey III

Location: City of Rochester Law Department
City Hall, Room 400A
30 Church Street
Rochester, New York 14614

Date: October 3, 2023

Time: 9:30 a.m.

Reported By: SANDRA C. HEWLETT, RPR

Alliance Court Reporting, Inc.

109 South Union Street, Suite 400

Rochester, New York 14607

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A P P E A R A N C E S

Appearing on Behalf of Plaintiffs:

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* * *



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1 CHARLES R. DEMPSEY III - BY MS. JONES
2 for their certified transcript charge, including any
3 expedite or other related production charges in
4 accordance with Rochester Rules;

5 AND IT IS FURTHER STIPULATED, that the
6 Notary Public, SANDRA C. HEWLETT, RPR, may administer
7 the oath to the witness.

8 * * *

9 CHARLES R. DEMPSEY III,

10 called herein as a witness, first being sworn,
11 testified as follows:

12 EXAMINATION BY MS. JONES:

13 Q. Good morning.

14 A. Good morning.

15 Q. My name is Peachie Jones. I'm an attorney
16 for the City of Rochester, as you know. I thank you
17 for being here today so I can take your deposition.

18 So you were here yesterday for your
19 daughter's deposition, so you know the same ground
20 rules, but I will still go over them. So you can ask
21 me any questions if you have them.

22 We have you placed under oath which means
23 you have to tell the truth, the whole truth. Like I
24 said yesterday, you're not offending anybody. Please
25 be honest so that we can have a good record for the



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2 A. R-E-I-C-H-E-R-T.

3 Q. How do you spell Ashley?

4 A. A-S-H-L-E-Y.

5 Q. Did you graduate high school?

6 A. Yes.

7 Q. Where did you graduate from?

8 A. Hilton.

9 Q. Did you pursue additional education after
10 high school?

11 A. Yes.

12 Q. Did you earn any additional degrees?

13 A. No.

14 Q. Where did you take classes after high
15 school?

16 A. Monroe Community College.

17 Q. Do you have any employment licenses or
18 certifications?

19 A. On -- I'm confused as to what that
20 includes.

21 Q. Do you have any special licenses that you
22 used for your employment?

23 A. Like I had a DOT license.

24 Is that something that would be included?

25 Q. Uh-huh.



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2 A. Yes.

3 Q. How long have you worked midnight to
4 9 a.m. most recently?

5 A. The last nearly two years.

6 Q. What hours did you work before midnight to
7 9 a.m.?

8 A. 9 a.m. to 9 p.m.

9 Q. How long did you work 9 a.m. to 9 p.m.?

10 A. From 2020 until -- or I believe I started
11 doing that at the very end of 2019 until I switched to
12 the current shift.

13 Q. What were your hours in 2019 before you
14 went to 9 a.m. to 9 p.m.?

15 A. 12:00 a.m. to like 3:30, 3:45 a.m.

16 Q. How long did you work from 12:00 a.m. to
17 3:45 a.m.?

18 A. Several years going back to about 2009 or
19 2010. I don't recall.

20 Q. Did you have an additional source of
21 employment or -- excuse me.

22 Did you have any additional sources of
23 income when you were working from 12 a.m. to 3
24 something a.m.?

25 A. Did I have another job during that time?



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2 Q. Correct.

3 A. No.

4 Q. Did you have another source of income
5 during that time?

6 A. No.

7 Q. Were you with Ashley from any point in
8 2009 to 2019?

9 A. Yes.

10 Q. Was she working during that time period?

11 A. Yes.

12 Q. Why did you choose to work part-time from
13 2009 to 2019 approximately?

14 MR. SHIELDS: Objection.

15 A. As a teamster, my position is granted
16 through seniority. I had to earn seniority to get a
17 full-time position.

18 Q. Are you saying you didn't have seniority
19 until 2019 approximately?

20 A. No.

21 Q. When did you first gain seniority in the
22 Teamsters?

23 A. I joined the Teamsters in 2006.

24 Q. When did you first become eligible to work
25 full-time?



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2 in any given situation if we were going to be inside
3 or outside, so I don't know if I ever categorized a
4 difference.

5 Q. Did you train Tesla to respond to
6 commands?

7 A. Yes.

8 Q. What commands did Tesla respond to?

9 A. First one she learned was "Sit." It was
10 instinctful for her. She would lay. She would roll
11 over and show her belly. You could never get her to
12 completely roll over. She was just comfortable
13 getting a treat after her belly was out.

14 When we were walking on a leash, I had,
15 you know -- we had to -- the "Heel" command to calm
16 down and wait at this intersection before we crossed
17 the road.

18 Q. You would say "Heel"?

19 A. That's correct.

20 She would -- she knew when it was food.
21 When we said "Food," she would go sit down and wait.

22 Q. Sorry.

23 When you said "Food," she would go and
24 wait by the bowl?

25 A. Well, she would understand that -- dogs



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2 Q. When did you first see the officer in your
3 backyard?

4 A. After I myself had stepped down from the
5 house level to the porch level.

6 Q. Where was Tesla when you first saw the
7 officer?

8 A. The bottom of the stairs, around the
9 corner of the porch. At which point I tried to tell
10 the officer that it was fine. And that she would be
11 okay.

12 Q. So what did you do or say after you saw
13 the officer?

14 A. I shouted that she -- "She's fine. It
15 will be okay."

16 Q. You said all of those words?

17 A. Yeah. I don't recall the precise word
18 that I said, but I do recall saying "She's fine"
19 because that's what I would say to everyone and I
20 followed it up with a statement like "It's okay."

21 That officer was too quick to just grab
22 his gun and fire it. I didn't -- there wasn't any
23 time for any communication. I'm sorry for raising my
24 tone.

25 Q. Where did Tesla go after you opened the



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2 door? Well, she went down the stairs.

3 Where did she go -- after Tesla went down
4 the stairs?

5 MR. SHIELDS: Objection.

6 A. Into the yard.

7 Q. Did Tesla head towards any specific part
8 of the yard?

9 A. Towards the center of the yard.

10 Q. From your perspective, did Tesla run
11 towards the officer?

12 A. When you exit the porch down the stairs,
13 there's a wall, which is my neighbor's house and you
14 only have the option of going into the center of the
15 yard or back where you came. So the officer, being in
16 the center of the yard, was in the direction that she
17 went.

18 Q. When you say "center of the yard," are you
19 meaning center east to west as opposed to north/south?

20 A. Yes.

21 Q. Were you normally outside when Tesla would
22 chase squirrels and birds?

23 MR. SHIELDS: Objection.

24 A. Are you asking if I was normally outside
25 when I let Tesla outside? That was her routine. I



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2 would be outside with her if I was outside to play
3 fetch or to have a cigarette. Then yes. Was I
4 outside every time she went outside? No.

5 Q. Have you been outside on multiple
6 occasions with Tesla when she is clearing the yard of
7 squirrels and birds?

8 A. Yes.

9 Q. Can you describe her behavior when she
10 clears the yards of squirrels and birds, just
11 generally speaking?

12 MR. SHIELDS: Objection.

13 A. She sort of runs in the direction of the
14 squirrel, which was usually in the direction of the
15 tree, and then do a half circle around the tree and
16 realize that she had once again been duped by
17 squirrels.

18 Q. So when you were describing your backyard
19 earlier, you named a lot of trees.

20 So -- any particular tree that she would
21 run in the direction of?

22 A. The one in my memory reference -- I'm
23 referring to is the chestnut tree, which is the
24 largest in the yard.

25 Q. I thought you said the chestnut tree was



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2 along one of the fences.

3 A. It was along the fence. I mean it is.
4 Fence was built after the tree.

5 Q. Do you know if that chestnut tree is
6 depicted in the body-worn camera video?

7 A. I'm sure at some point.

8 Q. Was the chestnut tree the one that had ivy
9 on it?

10 A. No.

11 Q. Was the chestnut tree close to your house?

12 A. Could you rephrase that?

13 Q. Is this the chestnut tree (indicating)?

14 A. No. That is a cherry tree. Also useful
15 for the squirrels for escape.

16 Q. Is that the chestnut tree?

17 A. On the left side of that video, that is
18 correct. It's an old one.

19 Q. Okay. So for the record, I pulled up the
20 body-worn camera video Officer Algarin marked COR 053
21 and I had paused it at 3 minutes and 43 seconds into
22 the video.

23 And -- do you want to describe in this
24 screenshot where the chestnut tree is?

25 A. Describe it -- where it is in the video



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2 screen?

3 Q. In screen.

4 A. The left.

5 Q. Okay. On the left-hand side you see the
6 tree and that's the chestnut tree?

7 A. Yes.

8 Q. Okay.

9 A. I'm not an arborist, but I think those are
10 chestnuts.

11 Q. Did you see the officer shoot Tesla?

12 A. Yes.

13 Q. What did you do after the officer shot
14 Tesla?

15 MR. SHIELDS: Objection.

16 A. I tried to put the -- myself in between
17 his gun and my dog. I tried to -- I tried to figure
18 out what was going on. I tried to like diffuse the
19 situation. I didn't know what I did was -- I left my
20 porch and proceeded across my yard.

21 Q. Were you still on your porch when the
22 officer shot the dog?

23 A. I believe I had not exited the porch at
24 that point.

25 Q. Did Tesla -- from your perspective, did



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2 Tesla run off the porch any quicker than she normally
3 would?

4 A. No.

5 Q. Did you hear the officer say anything --

6 A. No.

7 Q. -- when you were at your back door or on
8 the porch?

9 A. No.

10 Q. Did you hear Tesla bark or growl when she
11 was running down the porch and into the yard?

12 A. Not until he shot her. She whimpered and
13 it's a noise that lives rent free in my head.

14 Q. So what did you do after leaving the --
15 what did you do after leaving the porch and trying
16 to -- I think you said -- I don't remember what you
17 said.

18 What did you do after you left the porch
19 into the yard?

20 MR. SHIELDS: Objection.

21 A. I -- I started to ask the officer
22 questions or -- you know, like -- I started to shout.
23 I -- I walked out into my yard and he was holding his
24 gun now at me with my back to the house. And I didn't
25 know why he was even there. And like at that point it



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2 had only been seconds and I hadn't even really like --
3 I didn't even know he was a cop at first. And, you
4 know -- I saw the uniform. I put it all together in
5 seconds, but like -- I was being held at gunpoint
6 after that point. After I had come off the porch and
7 come down, I was being held at gunpoint.

8 Q. And then what happened?

9 A. I stopped walking because the officer
10 showed the intent to fire. And -- another officer had
11 come from another yard, I would assume. I don't know
12 where that guy came from. He just sort of showed up.

13 I remember I told that guy to like -- I
14 said, "Get that guy. Get the officer. Stop him.
15 He's like shooting at" -- "at my family."

16 I think I said something along the lines
17 of "Get your boss" or something. "Call the Sarge."

18 He -- he -- he holstered his gun and
19 pulled out some other weapon that he pointed at me for
20 a period of time until that officer had told him to
21 stop. I didn't know what that was.

22 And then I remember when -- when I finally
23 had felt like that guy was no longer pointing a weapon
24 at me, that I -- that I need to go and like figure out
25 what had happened with -- like -- I needed to go and



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2 A. I -- nobody gave me a gun to hold.

3 Q. Okay.

4 A. So like I said, I would say no.

5 Q. Did you ever consider buying a firearm
6 prior to the day of this incident?

7 A. No.

8 Q. The other type of weapon that you
9 mentioned Officer Algarin having, can you describe it
10 at all?

11 A. Black. He pulled it from his belt, so it
12 was police-issued. And he pointed it at me and it --
13 with -- with -- I believe he was only using one arm.
14 I -- I can't recall if he had to use both hands.

15 Q. When you reviewed the body-worn camera of
16 Officer Algarin in preparation for this deposition,
17 did you watch the entire video?

18 A. No.

19 Q. What portions did you watch?

20 MR. SHIELDS: Objection.

21 A. Beginning.

22 Q. Would you describe what was depicted in
23 the portion of the video that you reviewed in
24 preparation for the deposition today?

25 A. The officer jumping the fence, walking



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2 seconds. The time stamp on the video is 17:09:32.

3 All right. Here we go. We'll listen for
4 the dog.

5 (The video was played.)

6 Q. So did you hear the dog bark or growl in
7 that 5-second clip?

8 A. Yes.

9 Q. Why -- why was Tesla barking or growling?

10 MR. SHIELDS: Objection.

11 A. Probably because she didn't speak English.

12 Would that have been a preferable way to
13 approach an officer, for a dog to speak English?

14 Q. So I thought that you understood Tesla to
15 just be going out into the yard to look for birds and
16 squirrels?

17 MR. SHIELDS: Objection.

18 A. What do you mean by that? That was where
19 we lived.

20 Q. Did -- did you think that Tesla was
21 running towards the officer?

22 MR. SHIELDS: Objection.

23 A. At this point in the video?

24 Q. Well, no. During the 5-second clip that I
25 just played.



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2 A. From his -- from his belt.

3 Q. He -- so he pulled the second weapon from
4 his belt?

5 MR. SHIELDS: Objection.

6 A. Yes. Yes. That is where I thought he got
7 it from.

8 Q. Did he point it at you, the second weapon?

9 A. Yes.

10 Q. I guess I -- I just don't see it in the
11 video. So I will go back to 2:15 -- no. We'll go to
12 2:20. If you can just tell me where he pulls out the
13 second weapon, that would be helpful. So we have the
14 first one. I'm just looking for the second.

15 I will push play and I will push pause
16 whenever you tell me to push pause.

17 (The video was played.)

18 A. He -- he already has it at this point.

19 Q. So in -- in which hand is it?

20 MR. SHIELDS: Objection.

21 A. It's not on the screen.

22 Q. It's not on the screen.

23 So is it in his right hand?

24 MR. SHIELDS: Objection.

25 A. He had -- it makes sense it would be in



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2 his right hand --

3 Q. So --

4 A. -- but I'm not seeing it on your screen.

5 Q. Sure.

6 So I paused the video at 2 minutes and 29
7 seconds.

8 So in this frame, can you describe what
9 you see in this frame?

10 A. In terms of -- I see a fence. I see
11 rocks. I see myself. I see the officer's thumb.

12 Q. So that thumb that you're --

13 A. Is that what -- that's what I'm assuming
14 it is -- his hand?

15 Q. So that would be his left hand? Is that
16 right?

17 A. Yeah.

18 Q. So is there a weapon in the left hand?

19 A. I see his thumb.

20 Q. So is that a "yes" or a "no"?

21 MR. SHIELDS: Objection.

22 A. I don't see the weapon in that frame, no.

23 Q. So you're saying that the weapon then
24 would have been in his right hand that we can't see
25 right now?



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2 A. Yeah.

3 Q. Okay. Do you know when in this
4 interaction with Officer Algarin he pulled out the
5 second weapon?

6 A. After he holstered his pistol, he -- in
7 the same motion -- pulled out the other weapon.

8 Q. What did the other weapon look like?

9 A. And it was black. It was small. It -- it
10 was like -- it wasn't much larger than his hand.

11 Q. Do you know what a taser looks like?

12 A. The -- like yellow taser guns that RPD
13 uses? Is that -- or -- there are many tasers.

14 Q. Did the weapon that Officer Algarin pulled
15 out -- was that a taser?

16 A. I don't know.

17 Q. I'm sorry.

18 Did you answer?

19 A. I said, "I don't know."

20 Q. Okay. Okay. So I'm going to play this
21 again. We're going to go back to about 2:19. I want
22 to talk about the audio now. So I'm going to play the
23 sound and I'm also going to play it at regular speed.
24 Because slow speed is just hard to understand.

25 Okay. So I'm going to play about 5 or 7



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